



February 22, 2008

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## ENGROSSED SENATE BILL No. 226

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DIGEST OF SB 226 (Updated February 19, 2008 11:58 am - DI 75)

**Citations Affected:** IC 8-1.5.

**Synopsis:** Disposal of municipal utility property. Provides that a municipality that seeks to sell or dispose of nonsurplus municipally owned utility property must adopt an ordinance appointing three Indiana residents to serve as appraisers, as follows: (1) One disinterested person who is a licensed engineer. (2) One disinterested persons who is a licensed appraiser. (3) One disinterested person who is either a licensed engineer or a licensed appraiser. (Current law provides for the appointment of one disinterested freeholder who is a resident of the municipality and two disinterested licensed appraisers). Eliminates the requirement that one of the licensed appraisers must reside not more than 50 miles from the property. Provides that if the municipality decides to proceed with the sale or disposition after the  
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**Effective:** Upon passage.

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### Hershman, Mishler, Kruse

(HOUSE SPONSORS — WELCH, BELL, CROOKS)

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January 8, 2008, read first time and referred to Committee on Utilities & Regulatory Affairs.

January 24, 2008, amended, reported favorably — Do Pass.

January 28, 2008, read second time, ordered engrossed. Engrossed.

January 29, 2008, read third time, passed. Yeas 48, nays 0.

#### HOUSE ACTION

February 4, 2008, read first time and referred to Committee on Local Government.

February 21, 2008, amended, reported — Do Pass.

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ES 226—LS 6803/DI 101+



return of the appraisal, the municipality shall adopt an ordinance for the sale or disposition. Provides that not later than 45 days after the return of the appraisal, the municipality shall publish notice of a hearing on the ordinance for the sale or disposition. (Current law provides for the adoption of the ordinance after the hearing on the sale or disposition.) Allows a municipality to proceed to sell or dispose of the property if a petition opposing the sale or disposition is not filed within 30 days after the notice of hearing. (Current law provides that a municipality shall proceed to sell or dispose of the property if a petition is not filed within the 30 day period.)

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February 22, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 226

A BILL FOR AN ACT to amend the Indiana Code concerning  
utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-1.5-2-4, AS AMENDED BY P.L.113-2006,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 4. Whenever the municipal legislative body  
4 determines to sell or otherwise dispose of nonsurplus municipally  
5 owned utility property, it shall by ordinance or resolution, by a  
6 two-thirds (2/3) vote, provide for **the following**:

7 (1) The appointment, **as follows**, of **three (3) residents of**  
8 **Indiana to serve as appraisers**:

9 (A) One (1) disinterested ~~freholder~~ **residing in the**  
10 **municipality; and person who is an engineer licensed under**  
11 **IC 25-31-1.**

12 (B) ~~Two (2)~~ **One (1)** disinterested ~~appraisers~~ **appraiser**  
13 **licensed under IC 25-34.1.**

14 ~~who are residents of Indiana;~~

15 (C) **One disinterested person who is either:**

16 (i) **an engineer licensed under IC 25-31-1; or**

17 (ii) **an appraiser licensed under IC 25-34.1.**

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(2) The appraisal of the property. ~~and~~

(3) The time that the appraisal is due.

~~One (1) of the appraisers appointed under subdivision (1)(B) must reside not more than fifty (50) miles from the property.~~

SECTION 2. IC 8-1.5-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Each appraiser appointed as provided by section ~~4~~ **4(1)** of this chapter must:

(1) by education and experience, have such expert and technical knowledge and qualifications as to make a proper appraisal and valuation of the property of the type and nature involved in the sale;

(2) be a disinterested person; and

(3) not be a resident or taxpayer of the municipality.

(b) The appraisers **appointed under section 4(1) of this chapter** shall:

(1) be sworn to make a just and true valuation of the property; and

(2) return their appraisal, in writing, to the municipal legislative body within the time fixed by the resolution appointing them.

(c) If all three (3) appraisers cannot agree as to the appraised value, the appraisal, when signed by two (2) of the appraisers, constitutes a good and valid appraisal.

(d) ~~Not later than fifteen (15) days~~ **If**, after the return of the appraisal by the appraisers to the legislative body, the **legislative body decides to proceed with the sale or disposition of the nonsurplus municipally owned utility property, the legislative body shall adopt an ordinance providing for the sale or disposition, subject to section 6(a) of this chapter. Not later than forty-five (45) days after the return of the appraisal by the appraisers to the legislative body,** notice of a hearing on ~~an~~ the ordinance providing for the sale or disposition of the property and the total valuation of the property as fixed by the appraisal shall be published in the manner prescribed by IC 5-3-1.

(e) The hearing on the ordinance providing for sale or disposition may not be held for thirty (30) days after notice is given as required by subsection (d).

(f) If, within ~~this~~ **the** thirty (30) day period **described in subsection (e),** at least the number of the registered voters of the municipality required under IC 3-8-6-3 for a petition to place a candidate on the ballot sign and present a petition to the legislative body opposing the sale **or disposition**, the legislative body shall submit the question as to whether the sale **or disposition** shall be made to the voters of the municipality at a special or general election. In submitting the public

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question to the voters, the legislative body shall certify the question to the county election board of the county containing the greatest percentage of population of the municipality under IC 3-10-9-3. The county election board shall adopt a resolution setting forth the text of the public question and shall submit the question as to whether the sale **or disposition** shall be made to the voters of the municipality at a special or general election on a date specified by the municipal legislative body. **Pending the results of an election under this subsection, the municipality may not take further action to sell or dispose of the property as provided in the ordinance.**

(g) If a majority of the voters voting on the question vote for the sale **or disposition**, the legislative body shall proceed to sell **or dispose of** the property as provided in the ordinance.

(h) If a majority of the voters voting on the question vote against the sale **or disposition**, the sale **or disposition** may not be made.

(i) If, after the expiration of thirty (30) days as provided in subsection (e), a petition is not filed, the municipal legislative body ~~shall~~ **may** proceed to sell **or dispose of** the property as provided in the ordinance.

SECTION 3. IC 8-1.5-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) ~~After the hearing required by section 5 of this chapter and before any election that may be required by that section, The municipal legislative body may adopt an ordinance providing~~ **adopted by the municipal legislative body under section 5(d) of this chapter must provide for:**

- (1) the sale or disposition of the municipally owned utility property;
- (2) the manner of the sale **or disposition**;
- (3) the price, terms, and conditions of the sale **or disposition**, which must be consistent with any contractual obligations previously incurred under IC 8-1-2.2; and
- (4) the officer or officers who are to execute the proper documents conveying title on behalf of the municipality.

(b) The property may not be sold for less than its full appraised value, as set forth in the appraisal, less the amount of any bonds, liens, or other indebtedness due upon the property, and only in accordance with contractual obligations incurred under IC 8-1-2.2. The indebtedness shall either:

- (1) be paid in accordance with the terms and conditions of the instruments governing the indebtedness before the sale; or
- (2) be assumed and paid by the purchaser as part of the purchase price of the property.

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(c) This subsection applies if a municipal legislative body adopts an ordinance for the sale or disposition of municipally owned utility real property by acceptance of bids. A bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:

(1) beneficiary of the trust; and

(2) settlor empowered to revoke or modify the trust.

(d) The proceeds of any sale under this chapter shall be paid into the treasury of the municipality making the sale and become part of the general fund.

**SECTION 4. An emergency is declared for this act.**

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## COMMITTEE REPORT

Madam President: The Senate Committee on Utilities and Regulatory Affairs, to which was referred Senate Bill No. 226, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 2 through 3 with "[EFFECTIVE UPON PASSAGE]".

Page 1, delete lines 1 through 17, begin a new paragraph and insert:  
 "SECTION 1. IC 8-1.5-2-4, AS AMENDED BY P.L.113-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. Whenever the municipal legislative body determines to sell or otherwise dispose of nonsurplus municipally owned utility property, it shall by ordinance or resolution, by a two-thirds (2/3) vote, provide for **the following:**

(1) The appointment, **as follows**, of **three (3) residents of Indiana to serve as appraisers:**

(A) One (1) disinterested ~~freholder residing in the municipality; and~~ **person who is an engineer licensed under IC 25-31-1.**

(B) Two (2) disinterested appraisers licensed under IC 25-34.1.

~~who are residents of Indiana;~~

(2) The appraisal of the property. ~~and~~

(3) The time that the appraisal is due.

~~One (1) of the appraisers appointed under subdivision (1)(B) must reside not more than fifty (50) miles from the property."~~

Page 2, delete lines 1 through 2.

Page 3, line 10, reset in roman "shall".

Page 3, line 10, delete "may".

Page 4, delete lines 8 through 11, begin a new paragraph and insert:  
 "SECTION 4. **An emergency is declared for this act.**".

and when so amended that said bill do pass.

(Reference is to SB 226 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 7, Nays 0.

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## SENATE MOTION

Madam President: I move that Senator Kruse be added as coauthor of Engrossed Senate Bill 226.

HERSHMAN

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 COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred Senate Bill 226, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 16, begin a new paragraph and insert:

"SECTION 1. IC 8-1.5-2-4, AS AMENDED BY P.L.113-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. Whenever the municipal legislative body determines to sell or otherwise dispose of nonsurplus municipally owned utility property, it shall by ordinance or resolution, by a two-thirds (2/3) vote, provide for **the following**:

(1) The appointment, **as follows**, of **three (3) residents of Indiana to serve as appraisers**:

(A) One (1) disinterested freeholder residing in the municipality; **and person who is an engineer licensed under IC 25-31-1.**

(B) ~~Two (2)~~ **One (1)** disinterested appraisers **appraiser** licensed under IC 25-34.1.  
~~who are residents of Indiana;~~

(C) **One disinterested person who is either:**

- (i) **an engineer licensed under IC 25-31-1; or**
- (ii) **an appraiser licensed under IC 25-34.1.**

(2) The appraisal of the property. ~~and~~

(3) The time that the appraisal is due.

~~One (1) of the appraisers appointed under subdivision (1)(B) must reside not more than fifty (50) miles from the property."~~

Page 2, line 2, delete "4(1)(B)" and insert "**4(1)**".

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Renumber all SECTIONS consecutively.  
and when so amended that said bill do pass.

(Reference is to SB 226 as printed January 25, 2008.)

SMITH V, Chair

Committee Vote: yeas 9, nays 0.

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